SIERRA CLUB

85 Second Street, Second Floor San Francisco, CA 94105-3441
415 • 977 • 5500

May 29, 2001

Please reply to:
Judy Olmer
Chair, Marine Mammal Working Group
6420 Wishbone Terrace
Cabin John MD 20818

By mail and fax

Donna Wieting, Chief
Marine Mammal Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring MD 20910-3226

Re: 66 FR 15375, Proposed Rule for the Taking of Marine Mammals Incidental to Navy Operations of SURTASS LFA Sonar

Dear Ms. Wieting:

The Sierra Club provided extensive comments in 1999 to the Navy and to NMFS on its concerns about the Navy's long-range low-frequency active sonar program. Members spoke for the Club and for themselves at all three of the recent public hearings on this proposed rule making for a small take permit. Thus, NMFS must be well aware of Sierra Club's opposition to the deployment of SURTASS LFA. I will therefore attempt to keep these comments short and focused on the NMFS' draft rule that will permit the taking of "small numbers" of marine mammals incident to operation of the SURTASS LFA sonar system. We will not comment on the system's potential to harm human beings or on its potential as a reasonable part of US defense planning. Although we consider both of those subjects to be important considerations in any decision to deploy the system, we understand that they do not fall within NMFS' competence.

The draft rule makes it quite apparent that NMFS essentially accepts what most outside observers believe to be the very limited scientific evidence the Navy has presented that its active sonar program will affect only limited numbers of marine mammals (as well as other sea life) and that such harassment as takes place will affect wild populations only at a "negligible" level. Indeed, NMFS assisted as a "cooperating agency" in the drafting of the EIS and Navy's request for a small take permit—a function which may well accord

with federal regulations and practices but which has severely compromised any appearance of objectivity with regard to the Navy's application.

Despite what the Navy alleges in its final Environmental Impact Statement and what NMFS appears to affirm, we simply do not know enough about the multitude of species that will be affected or the ways in which these transmissions will act in the ocean environment to be able to assert with so much assurance that the impact of this new extremely powerful sound source will be benign. The Navy's own research program, on which it based its DEIS and the FEIS, was far too limited in scope to do more than contribute slightly to our knowledge of how a few species of whales may have reacted to sound levels well below those planned for the operational LFA program. As NMFS is well aware, there are several species of whales about whose numbers, life cycles, and whereabouts we know very little—much less what the impact of extremely loud and persistent noise on these species might be. LFAS has never been tested, to our knowledge, at the levels planned for its operational use or even at the 180dB level the Navy claims would be the threshold for temporary injury or disruption.

Moreover, in describing the state of other scientific evidence on this matter, the Navy generalized, extrapolated from, and sometimes misused the very limited data available to seem to buttress its preordained conclusions. Contrary to what the EIS and the draft rule assert, 180 dB is not generally accepted among marine biologists as the level up to which marine mammals are safe from harmful noise (see, for example, comments of Dr. Hal Whitehead). Further, the EIS does not deal at all with the analysis by Ken Balcomb and others concerning resonance frequency effects on whales and dolphins.

In justifying its program, the Navy has chosen essentially to ignore a number of mass strandings connected with naval maneuvers involving one form or another of active sonar. Such incidents, most notably the stranding of 17 whales and dolphins in the Bahamas in March 2000, are dismissed as irrelevant to LFAS because the active sonars were operated at different frequencies or in different ways from LFAS. NMFS evidently agrees, saying in its proposed rule that "there is no evidence linking SURTASS LFA sonar to any stranding event." The burden of proof is thus placed on those who argue that the events may have been (or probably were) connected.

While it may literally be true that there is no <u>firm</u> evidence linking SURTASS LFA to the strandings in the Bahamas or the Mediterranean Sea in 1996, there was a strong connection in time and geography from the strandings to naval operations and the use of active sonars. What these stranding incidents suggest to most observers is that whales and dolphins can be catastrophically affected by active sonar at a variety of frequencies, at received levels well below the 180 dB level, and far beyond the 1-km range the Navy has so confidently predicted will ensure no animal is severely harmed. What happened in the Bahamas makes it clear that diagrams in the EIS with their precise 1-km circles around the transmitting ships do not represent what may really happen in the ocean, given possible topographical and other anomalies.

The Navy also has persistently refused to credit the idea that LFA impacts may take hours, even days, to play out and that the affected animals may beach dozens of miles from the operational area. Worse, most will probably never beach at all, because they will simply die and sink. As scientist Lindy Weilgart has pointed out, the standard active sonars used by the US and other navies since World War II may well have "decimated populations of beaked whales the world over and [we] have never known about it." This makes it extremely unlikely that the Navy ever will report any animal killed or seriously injured by LFA; such deaths and injuries have been defined out of existence. NFMS, however, should understand this phenomenon and take it into account in its rule-making.

Presumably, LFA operations will be classified, and no information about or from these missions will be made public until the Navy has sanitized the reports for transmittal to NMFS (and eventual release to the public). Given a yearly reporting requirement, this means that reports are likely to be seriously delayed in time from the time when populations of marine mammals or other animals actually were harmed. Since it seems unlikely, as argued above, that the Navy will ever identify damage to affected animals, it will be vital for volunteers worldwide to establish networks that will respond immediately to mass strandings, endeavoring to provide for the kind of necropsy evidence that Ken Balcomb collected from the dead cetaceans in the Bahamas and bringing pressure on NMFS and the Navy for immediate investigation of any operations of SURTASS LFA in the vicinity.

Sierra Club has a variety of other concerns about LFA sonar and the proposed take permit. One concerns the definition of "small take." NMFS has given no indication about the level at which it would be concerned that the program was in fact having serious impacts on marine mammals and other vulnerable sea life. Would the 17 whales and dolphins which washed ashore in the Bahamas in March 2000 constitute a "small take?" If Ken Balcomb is correct and all of the 35 beaked whales he had been studying were killed by resonance frequency effects, would that represent a "negligible" impact on the beaked whale population of the Western Atlantic-Caribbean area? Some species of whales and dolphins are reasonably abundant, and at the species or population level probably could sustain the loss of a few dozen animals, however regrettable that might be. But what about North Atlantic Right Whales (or the even more endangered North Pacific Right Whales), where every individual is important to the survival of the species, or blue whales, which are still struggling to recover from the impact of whaling?

The Navy's application leaves a huge gap in its exception for times of heightened tension. No definition is provided for what constitutes such a period. While it is understandable, though regrettable, that caution would be set aside during times of war, periods of heightened tension may occur with some frequency. Would the recent tension with China over the downed reconnaissance plane have qualified as a "period of tension?" Would SURTASS LFA be used in such instances under Alternative 2, with no geographic limitations or mitigation?

What the Navy's small take request and NMFS' proposed rule for SURTASS LFA are is a giant gamble. Both services hope the program won't kill large numbers of whales, and that mitigation efforts will work as advertised. Neither service has the scientific knowledge available to be sure that is the case. It may be that we, the critics, are wrong and LFAS will not prove as damaging to marine life as we fear. In that case, we will have wasted a good deal of effort. If it is the Navy and NMFS who are wrong, however, the result of that miscalculation will be very grave. The National Marine Fisheries Service bears a responsibility in its role as protector of US oceans and ocean wildlife to err on the side of precaution. The proposed rule for the US Navy's small take permit shows little sign of such precautionary concerns.

Sierra Club continues to support Alternative 3—the "No Action" alternative.

Sincerely,

Judy Olmer
Chair, Marine Mammal Working Group

Vivian Newman
by io
Vivian Newman
Chair, National Committee on Marine
Wildlife and Habitat